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February 1, 2020

The Honorable Esther Salas, U.S.D.J.
MLK Jr. Federal Building
50 Walnut Street
Newark, N.J. 07101

RE: Fuller v. Insys Therapeutics, Inc., et al
2:17-cv-07877-ES-SCM

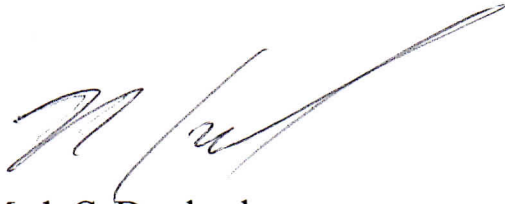
Dear Judge Salas,

On January 31, 2020 Plaintiffs forwarded a letter requesting the Court's permission to file a brief, supplemental response to Rochester Drug Cooperative, Inc.'s ("RDC") Motion to Dismiss. Plaintiffs intentionally did not attempt to supplement the record with additional evidence until your Honor granted permission to file a supplemental response. However, Mr. Viola's letter of January 31, 2020 contains material misrepresentations of fact that cannot go unchallenged.

Attached hereto is a document Plaintiffs received within the last week confirming that in 2015 and 2016 RDC's entire criminal Subsys distribution scheme was being run out of Fairfield, New Jersey. Mr. Viola was provided with this document and was aware of its content, yet still represents to this court that "***RDC and Lindencare are both out of state, New York entities who engaged in a New York to New York transaction, the only consideration given to a personal jurisdiction determination.***" Pursuant to Rule 11, Mr. Viola should be sanctioned for his dishonest and frivolous argument that RDC did not have any contacts with New Jersey and that it did not conduct business in New Jersey.

This statement to the Court is illustrative of the very type of obstruction and misrepresentation Plaintiffs have encountered at every stage of our four-year search for the truth in this case. I can definitively represent to the Court that Michael Babich, former CEO of Insys, testified under oath on January 27, 2020 that RDC was an essential co-conspirator in the illegal, fraudulent scheme to distribute Subsys in the state of New Jersey along with Linden Care pharmacy. Plaintiffs have uncovered further documentation which establishes that RDC was essentially the sole distributor of Subsys to Linden Care, the pharmacy that filled and dispensed decedent's Subsys prescriptions in 2015-2016. There is other new evidence which bears directly on the issues raised in RDC's Motion to Dismiss and Plaintiffs ask this Court for an opportunity to bring all these newly discovered facts to the attention of the Court before this dispositive motion is decided.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Dewland', with a long, sweeping horizontal stroke extending to the right.

Mark C. Dewland
Attorney at Law
MCD/jd w/encl

Message

From: Darryl Baker [dbaker@insysrx.com]
Sent: 8/11/2015 6:51:10 PM
To: John Kapoor (JKapoor@ejfinancial.com) [jkapoor@ejfinancial.com]
CC: Dion Reimer [dreimer@insysrx.com]; Michael Babich [mbabich@insysrx.com]; Sean Hammond [shammond@insysrx.com]; Steven Harper [sharper@insysrx.com]
Subject: RDC site visit

Dr. Kapoor,

Dion and I paid a site visit to RDC earlier today. We met with the following:

Larry Doud – CEO
Joe Brennan – COO
Kim Perry – CFO
Ed Kirker – Director of Inventory Management
Chris Masseth – Manager of Trade

Larry has led RDC for 24 years.

I first provided an overview of the Insys story, with particular emphasis on the pipeline product opportunities. Larry then walked us through the history of RDC, which was formed in 1905 and has focused their service on independent pharmacies in the northeast since inception. They have grown rapidly in the past 10 years, and for their fiscal year-end 3/31/15 reported gross revenue in excess of \$2 billion. Larry indicated RDC is currently the sixth largest wholesaler in the country. As a cooperative, they are owned by the member pharmacies. They paid \$31 million in dividends to cooperative members last year, with approximately \$2 million going to Linden Care. Insys sold \$128 million to RDC during their last fiscal year, which represented 6.5% of RDC COGS during that period. RDC has a line of credit agreement in the amount of \$185 million with M&T Bank. They had \$67 million drawn against that line as of 3/31/15, so they have ample borrowing capacity. RDC has always been timely in its payments to Insys.

We took a tour of their 55k square foot warehouse facility in Rochester and discussed their new warehouse facility, which is approximately 110k square feet, located in Fairfield, NJ. This new location will allow them to provide more responsive service to the New York, NY metropolitan area. It is RDC's intention to transition the Subsys business from New York to New Jersey. We discussed the potential state income tax nexus implications of our shipping directly to New Jersey vs. to New York, as we have historically done. We will have Andersen Tax evaluate the state income tax apportionment implications in connection with this proposed operational change.

Having now personally met the key management team of RDC, I come away from this visit with increased confidence in RDC's ability to continue to provide responsive service to Subsys patients and that the credit risk Insys has taken on in regards to this account is justified and supported. On a go-forward basis, I intend to have quarterly calls with Kim Perry to review and discuss the account and the business relationship.

Please let me know if you have any questions or would like to discuss the RDC business.

Darryl